

## Message Text

CONFIDENTIAL

PAGE 01 BERLIN 01451 231850Z

42

ACTION EUR-25

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-07 H-03 INR-11 L-03

NSAE-00 NSC-07 PA-04 RSC-01 PRS-01 SP-03 SS-20

USIA-15 SAJ-01 IO-14 ACDA-19 EB-11 STR-08 DRC-01

SAM-01 OMB-01 /157 W

----- 039671

P R 231745Z AUG 74

FM USMISSION BERLIN

TO AMEMBASSY BONN PRIORITY

INFO SECSTATE WASHDC 3856

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION NATO

C O N F I D E N T I A L BERLIN 1451

E.O. 11652: GDS

TAGS: PGOV WB GW GE

SUBJECT: BRUECKMANN-SENATOR FOR JUSTICE EXPLAINS POSSIBLE  
LEGISLATIVE SOLUTION

REFS: A) BERLIN 1442; B) BERLIN 1044; C) BONN 9730

1. SUMMARY: BERLIN JUSTICE SENATOR KORBER PREDICTED TO  
MISSION OFFICER AUGUST 23 THAT BRUECKMANN CASE COULD BE RE-  
SOLVED WITHIN NEXT FEW MONTHS WITHOUT RECOURSE TO FEDERAL  
COURTS OR NEED FOR NEW ALLIED INTERVENTIONS IF ALLIES WOULD  
GIVE GREEN LIGHT TO AMENDMENTS TO 1953 LAW ON INNER-GERMAN  
LEGAL ASSISTANCE IN CRIMINAL MATTERS DEVELOPED BY FRG GOVERNING  
PARTIES. UNDER AMENDMENTS, WHICH COULD BE TACKED ON TO AMEND-  
MENTS ALREADY INTRODUCED IN BUNDESTAG JUDICIARLY COMMITTEE BY  
CDU/CSU, BERLIN PUBLIC PROSECUTOR WOULD HAVE FLEXIBILITY  
TO REVIEW KAMMERGERICHT DECISION THAT GIRL SHOULD BE EXTRA-  
DITED TO GDR IN LIGHT OF NEW DEVELOPMENTS SUCH AS PROCEEDINGS  
BEFORE STRASBOURG HUMAN RIGHTS COMMISSION. KORBER, AS HAD  
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 BERLIN 01451 231850Z

GOVERNING MAYOR (REF A), SAID NO GERMAN POLITICIAN INCLUDING

PUBLIC PROSECUTOR WHO WAS POLITICAL FIGURE SELECTED BY HOUSE OF REPRESENTATIVES AND IN JUSTICE SENATOR'S CHAIN OF COMMAND, WOULD IN PRESENT CIRCUMSTANCES ORDER GIRL BACK TO GDR. KORBER SAID HE EXPECTED PROSECUTOR WOULD UNDERTAKE TO HAVE GIRL TRIED IN WEST BERLIN. END SUMMARY.

2. KORBER SAID WORK ON FRG DRAFT AMENDMENTS TO 1953 LAW HAD BEEN COMPLETED LATE JULY. HE HAD PREVIOUSLY ADVISED FRG JUSTICE MINISTER VOGEL THAT CDU/CSU AMENDMENTS CONTAINED NUMBER OF POTENTIAL DIFFICULTIES FOR BERLIN. HE HAD EXPLAINED THAT ALLIES WOULD BE CONCERNED THAT IF GIRL WERE PERMITTED TO APPEAL KAMMERGERICHT DECISION TO FEDERAL SUPREME COURT (BUNDESGERICHTSHOF) THERE WAS POSSIBILITY THAT COURT WOULD NOT FEEL ITSELF CONSTRAINED, AS BERLIN COURT WOULD, TO IGNORE FEDERAL CONSTITUTIONAL COURT'S DECISION ON BRUECKMANN. CDU/CSU DRAFT OPENED UP THIS POSSIBILITY BY PROVIDING A) THAT DECISIONS OF HIGHEST LAND COURT IN EXTRADITION CASES ARISING UNDER 1953 LAW COULD BE APPEALED TO SUPREME COURT; AND B) THAT POSSIBILITY OF SUCH APPEAL EXISTED WITH RESPECT TO DECISION ALREADY HANDED DOWN BY HIGHEST LAND COURT BUT NOT YET EXECUTED WHEN AMENDMENT TOOK EFFECT. KORBER ALSO EXPRESSED RESERVATION THAT ANY REVISION OF 1953 LAW HAD TO HAVE GENERAL APPLICATION AND NOT APPEAR TO BE ONLY "LEX BRUECKMANN." HE SAID JUSTICE MINISTER APPRECIATED NEED FOR LAW TO BE ACCEPTABLE TO ALLIES SO THAT IT COULD BE ADOPTED IN BERLIN BY ROUTINE MANTELGESETZ.

3. AS RESULT OF KORBER-VOGEL DISCUSSION DRAFT AMENDMENTS REVISED TO PROVIDE:

A. CDU/CSU RETROACTIVITY CLAUSE WOULD BE STRICKEN AND APPEAL OF HIGHEST LAND COURT DECISION WOULD BE PERMITTED ONLY IF FILED WITHIN WEEK OF DECISION. ACCORDINGLY, BRUECKMANN WOULD NOT BE ENTITLED TO APPEAL KAMMERGERICHT DECISION TO SUPREME COURT.

B. PUBLIC PROSECUTOR WOULD BE GIVEN AUTHORITY TO MAKE NEW DECISION SUBSEQUENT TO HIS INITIAL DECISION ON APPROPRIATENESS OF EXTRADITION TO GDR, OR SUBSEQUENT TO HIGHEST LAND COURT'S DECISION, IF HE CONSIDERED THAT THERE WERE NEW FACTS OR EVIDENCE WHICH SIGNIFICANTLY CHANGED SITUATION AT TIME INITIAL DECISIONS WERE MADE. IF PUBLIC PROSECUTOR DETERMINED

CONFIDENTIAL

PAGE 03 BERLIN 01451 231850Z

THAT THERE WERE SUCH NEW FACTS OR EVIDENCE AND REVERSED DECISION THAT INDIVIDUAL SHOULD BE EXTRADITED, MATTER WOULD END THERE WITHOUT NEED FOR COURT TO TAKE FURTHER ACTION.

4. KORBER SAID NEW AMENDMENTS HAD MAJOR ADVANTAGE NOT ONLY OF OPENING WAY TO RESOLUTION OF BRUECKMANN CASE, BUT ALSO OF BRINGING 1953 LAW INTO GENERAL CONFORMITY WITH GERMAN CRIMINAL LAW. UNTIL NOW 1953 LAW HAD BEEN SOMETHING OF ANOMALY BE-

CAUSE, UNLIKE VIRTUALLY EVERY OTHER CRIMINAL-JUSTICE MATTER, DECISION OF HIGHEST LAND COURT PURSUANT TO IT COULD NOT BE APPEALED TO FEDERAL COURT, AND, UNLIKE NORMAL EXPULSION PROCEEDING, FINAL DECISION ON WHETHER TO REMOVE INDIVIDUAL FROM BERLIN OR FRG JURISDICTION WAS IN HANDS OF COURT RATHER THAN PUBLIC PROSECUTORS. (FOR EXAMPLE, UNDER EXPULSION PROCEEDINGS OF FOREIGNERS' LAW, EVEN IF POLICE PRESIDENT MADE DECISION TO EXPEL INDIVIDUAL AND COURT CONFIRMED THAT DECISION ON APPEAL, EXECUTIVE AUTHORITIES HAVE DISCRETION TO REVERSE THEMSELVES.)

5. KORBER EXPRESSED SURPRISE THAT WHEN FRG INFORMED ALLIES OF ITS PROPOSED AMENDMENTS IN BONN GROUP EARLIER THIS MONTH INITIAL REACTION WAS THAT THEY RAISED MATTERS OF POLITICAL SENSITIVITY. HE STRESSED NEED FOR EARLY CONSIDERED ALLIED REACTION TO DRAFT AMENDMENTS SINCE JUDICIARY COMMITTEE WAS EXPECTED TO BEGIN DETAILED CONSIDERATION OF MORE CONTENTIOUS CDU/CSU DRAFT WHEN BUNDESTAG RESUMED IN MID-SEPTEMBER. KORBER SAID THAT, IF ALLIED GREEN LIGHT RECEIVED, FRG WOULD SEEK TO MODIFY CDU/CSU DRAFT AS OUTLINED IN PARA 3 ABOVE. HE DOUBTED THAT THERE WOULD BE MUCH DIFFICULTLY MARRYING TWO PROPOSALS AND REPORTING BILL OUT FOR PASSAGE BY MID-OCTOBER. FRG WOULD USE AS ARGUMENT FOR QUICK, NON-CONTENTIOUS ACTION NOT ONLY NEED TO AVOID DEBATE THAT COULD HIGHLIGHT BERLIN PROBLEM IN UNFORTUNATE WAY, BUT ALSO NEED FOR FRG TO REPORT TO STRASBOURG HUMAN RIGHTS COMMISSION WHEN IT RESUMED STUDY OF CASE SEPTEMBER 30. HUMAN RIGHTS COMMISSION HAD ADVISED FRG IT FIRST WISHED TO CONSIDER WHETHER THERE WAS POSSIBILITY OF AMICABLE SETTLEMENT. BERLIN OFFICIALS CONSIDERED THIS UNREALISTIC, SINCE BRUECKMANN CASE HAD BEEN ADJUDICATED AND THERE WAS COURT DECISION ON BOOKS THAT REMAINED DEFINITIVE UNTIL NEW LEGAL AUTHORITY PROVIDED. FRG WOULD LIKE TO BE ABLE TO ASSURE STRASBOURG, HOWEVER, THAT BILL WAS IN CONFIDENTIAL

CONFIDENTIAL

PAGE 04 BERLIN 01451 231850Z

LEGISLATIVE MACHINERY WHICH WOULD OPEN UP POSSIBILITY OF REVIEW BY COMPETENT BERLIN AUTHORITIES.

6. AS SOON AS AMENDMENTS ENACTED, KORBER SAID, BERLIN HOUSE WOULD ADOPT THEM BY MANTELGESETZ. HE FELT IT CERTAIN THAT PUBLIC PROSECUTOR WOULD THEN QUICKLY DETERMINE THAT STRASBOURG PROCEEDING, WHICH WOULD PROBABLY LAST AT LEAST ANOTHER YEAR, CONSTITUTED NEW ELEMENT IN SITUATION THAT RENDERED EARLIER EXTRADITION DECISION UNFAIR SINCE BRUECKMANN WOULD THEN HAVE BEEN IMPRISONED FOR SEVERAL YEARS WITHOUT HAVING OPPORTUNITY FOR TRIAL. PROSECUTOR WOULD ACCORDINGLY ANNUL EXTRADITION DECISION AND BRUECKMANN DETENTION ORDER BASED ON ORIGINAL GDR REQUEST FOR EXTRADITION. SINCE CASE INVOLVED LOSS OF LIFE, PROSECUTOR WOULD THEN IMMEDIATELY REQUEST DETENTION ORDER SO THAT BRUECKMANN COULD BE KEPT IN JAIL

WHILE WEST BERLIN AUTHORITIES PREPARED TO BRING HER TO TRIAL HERE. (CRIMINAL LAW IN FORCE IN FRG AND WEST BERLIN PERMITS, OF COURSE, TRIAL OF GERMAN FOR OFFENSE COMMITTED ANYWHERE IN WORLD IF OFFENSE WAS CRIME BOTH IN JURISDICTION WHERE COMMITTED AND IN FRG AND WEST BERLIN.) PROSECUTOR WOULD SEEK TO OBTAIN COOPERATION FROM GDR PROSECUTORS IN GETTING WITNESSES, DOCUMENTS AND EVIDENCE. EVEN IF GDR FAILED TO COOPERATE, HOWEVER, KORBER SAID THERE WAS POSSIBILITY BRUECKMANN WOULD BE CONVICTED OF WHAT WOULD AMOUNT TO SOME FORM OF MANSLAUGHTER SINCE PROSECUTORS HAD AVAILABLE VALID CONFESSION OF GUILT GIRL MADE LAST YEAR TO WEST BERLIN JUDGE. GIVEN LENGTH OF TIME GIRL WOULD ALREADY HAVE SPENT IN JAIL AND EXTENUATING CIRCUMSTANCES INVOLVED IN KILLING, HOWEVER, IT WAS POSSIBLE THAT CONVICTION MIGHT INVOLVE LITTLE IF ANY ADDITIONAL IMPRISONMENT.

7. AT CLOSE OF CONVERSATION, KORBER AGAIN EMPHASIZED IMPORTANCE OF MOVING QUICKLY WITH FRG DRAFT AMENDMENTS SO THAT LEGISLATIVE PROCESS COULD BE INVOKED NEXT MONTH.

8. COMMENT: KORBER'S EXPLANATION INDICATES FRG DRAFT AMENDMENTS MAY WELL OFFER GERMANS EARLY WAY OUT OF THEIR BOX WITHOUT RAISING SPECTRE OF FURTHER INVOLVEMENT, DIRECT OR INDIRECT, BY FEDERAL CONSTITUTIONAL COURT. SINCE AMENDMENTS WOULD MAKE 1953 LAW CONFORM MORE GENERALLY TO BULK OF CRIMINAL LAW IN FORCE IN BERLIN AND FINAL DECISIONS ON CONFIDENTIAL

CONFIDENTIAL

PAGE 05 BERLIN 01451 231850Z

BRUECKMANN WOULD CLEARLY BE TAKEN BY BERLIN RATHER THAN BY FEDERAL AUTHORITIES, WE WOULD BE ON STRONG GROUND IN DEFENDING ACTION AGAINST ANY SOVIET PROTESTS. WE WOULD RECOMMEND THAT, WITHOUT GETTING INTO FRG DOMESTIC POLITICAL DISPUTE BY FORMALLY CHOOSING SIDES ON BILLS DEVELOPED BY GOVERNMENT AND OPPOSITION PARTIES, WE URGE BONN GROUP TO ADVISE FRG THAT WE SEE NO DIFFICULTIES WITH THEIR PROCEEDING WITH GOVERNMENT DRAFT. WE WOULD SUGGEST BONN GROUP COULD ALSO USEFULLY REVIEW WITH FRG IMPORTANCE OF ENSURING THAT WHATEVER BILL COMES OUT OF BUNDESTAG LAYS GROUNDWORK FOR RESOLUTION OF BRUECKMANN CASE IN BERLIN. KLEIN

CONFIDENTIAL

NNN

## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** EXTRADITION, LAW, TRIALS, BERLIN TRIPARTITE MATTERS, COURTS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 23 AUG 1974  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** boyleja  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1974BERLIN01451  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** GS  
**Errors:** N/A  
**Film Number:** D740233-0825  
**From:** BERLIN  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1974/newtext/t19740824/aaaaaubx.tel  
**Line Count:** 212  
**Locator:** TEXT ON-LINE, ON MICROFILM  
**Office:** ACTION EUR  
**Original Classification:** CONFIDENTIAL  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 4  
**Previous Channel Indicators:**  
**Previous Classification:** CONFIDENTIAL  
**Previous Handling Restrictions:** n/a  
**Reference:** A) BERLIN 1442; B) BERLIN 1044; C) B, ONN 9730  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** boyleja  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 29 APR 2002  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <29 APR 2002 by boyleja>; APPROVED <04 MAR 2003 by boyleja>  
**Review Markings:**

Declassified/Released  
US Department of State  
EO Systematic Review  
30 JUN 2005

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** BRUECKMANN-SENATOR FOR JUSTICE EXPLAINS POSSIBLE LEGISLATIVE SOLUTION  
**TAGS:** PGOV, WB, GE, GC, (BRUECKMANN, INGRID)  
**To:** BONN  
**Type:** TE  
**Markings:** Declassified/Released US Department of State EO Systematic Review 30 JUN 2005